

a Party to this Agreement is sued with respect to infringement of an intellectual property right as a result of its use of that right or use on its behalf, the Party may limit remedies against the government to payment of full compensation to the right-holder.

H. Each Party shall authorize its judicial authorities to order the infringer of an intellectual property right to pay the right holder's expenses, which may include attorney's fees.

I. Each Party shall provide its judicial authorities the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse.

J. Each Party may also provide administrative procedures to enforce intellectual property rights. To the extent that any civil remedy can be ordered as a result of an administrative decision on the merits of a case, the procedures shall conform to principles equivalent in substance to those set forth in this Article XX, section 2.

3. Provisional measures

A. Each Party shall provide its judicial authorities the authority to order prompt and effective provisional measures:

(1) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of allegedly infringing goods, including measures to prevent the entry of imported goods at the border; and

(2) to preserve relevant evidence in regard to the alleged infringement.

B. Each Party shall authorize its judicial authorities to require the applicant for provisional measures to provide any evidence reasonably available to that applicant in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder, that his right is being infringed or such infringement is imminent, and that

any delay is likely to cause irreparable harm to the right holder or there is a demonstrable risk of evidence being destroyed. Each Party shall also authorize its judicial authority to require the right-holder to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

C. Each Party shall authorize its judicial authorities to adopt provisional measures on an ex parte basis, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

D. Where provisional measures have been adopted on an ex parte basis, the parties affected shall be given notice, without delay, after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

E. Without prejudice to paragraph D above, provisional measures taken on the basis of paragraphs A and C above shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period not exceeding one month after the notification of the provisional measures, unless determined otherwise by the judicial authority.

F. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant (other than settlement of the case), or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

G. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in section 3 of this Article.

4. Criminal Procedures

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting and copyright piracy on a commercial scale. Penalties available shall include imprisonment and monetary fines sufficient to provide an effective deterrent and, in appropriate cases, the seizure, forfeiture and destruction of the infringing goods and of any device the predominant use of which has been in the commission of the offense. Each Party may provide for criminal procedures and penalties to be applied in cases of infringement of any other intellectual property right, in particular where it is committed willfully and on a commercial scale.

ARTICLE XXI

ENFORCEMENT AT THE BORDER

1. Each Party shall adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or unauthorized copies of copyright goods may take place, to lodge an application in writing with its competent authorities, whether administrative or judicial, for the suspension by the customs administration of the release of such goods into free circulation. No Party shall be obligated to apply such procedures to goods in transit. A Party may permit such an application to be made in respect of goods that involve other infringements of intellectual property rights, provided that the requirements of this Article are met. A Party may also provide for corresponding procedures concerning the suspension by the customs administration of the release of infringing goods destined for exportation from its territory.

2. Each Party shall require any applicant who initiates procedures under section 1 to provide adequate evidence:

A. to satisfy that Party's competent authorities that, under its domestic laws, there is prima facie an infringement of its intellectual property right; and

B. to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs administration. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, if so, the period for which the customs administration will take action.

3. Each Party shall authorize its competent authorities to require an applicant under section 1 to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

4. A Party's customs administration, upon receiving an application pursuant to procedures adopted in accordance with this Article XXI, may suspend the release of goods involving industrial designs, patents, integrated circuits or trade secrets into free circulation on the basis of a decision other than by a judicial or other independent authority; provided, however, if the period set forth in sections 6 through 8 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, such Party shall permit the owner, importer or consignee of such goods to receive such goods for entry into commerce on the posting of a security in an amount sufficient to protect the right holder against any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue its right of action within a reasonable period of time.

5. Each Party shall ensure that its customs administration will promptly notify the importer and the applicant when the customs administration suspends the release of goods pursuant to section 1.

6. Each Party shall ensure that its customs administration will release goods from suspension if within a period not exceeding 10 working days after the applicant under section 1 has been served notice of the suspension the customs administration has not been informed that:

A. a party other than the defendant has initiated proceedings leading to a decision on the merits of the case, or

B. a competent authority has taken provisional measures prolonging the suspension; provided that all other conditions for importation or exportation have been met. Each Party shall provide that, in appropriate cases, the customs administration may extend the suspension by another 10 working days.

7. Each Party shall ensure that if proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall

take place on request of the defendant with a view to deciding, within a reasonable period, whether the measures shall be modified, revoked or confirmed.

8. Notwithstanding sections 6 and 7, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, section 3:E of Article XX shall apply.

9. Each Party shall ensure that its competent authorities have the authority to order the applicant under section 1 to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to section 6.

10. Without prejudice to the protection of confidential information, each Party shall ensure that its competent authorities have the authority to give the right holder sufficient opportunity to have any goods detained by the customs administration inspected in order to substantiate its claims. Each Party shall also ensure that its competent authorities have the authority to give the importer an equivalent opportunity to have any such goods inspected. Where the competent authorities have made a positive determination on the merits of a case, a Party may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.

11. Where a Party requires its competent authorities to act on their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

A. the competent authorities may at any time seek from the right holder any information that might assist them to exercise these powers;

B. the importer and the right holder shall be promptly notified of the suspension by the Party's competent authorities, and where the importer lodges an appeal against the suspension with competent authorities, the suspension shall be subject to the conditions, with such modifications as may be necessary, set out in sections 6 through 8; and

C. the Party may exempt public authorities and officials from liability, except when the offending actions were not taken or intended in good faith.

12. Without prejudice to other rights of action open to the right holder and subject to the defendant's right to seek judicial review, each Party shall provide that its competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in section 2:F of Article XX. In regard to counterfeit goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

13. A Party may exclude from the application of sections 1 through 12 small quantities of goods of a non-commercial nature contained in travelers' personal luggage or sent in small consignments that are not repetitive.

ARTICLE XXII

TIMING OF SPECIFIC INTELLECTUAL PROPERTY OBLIGATIONS

1. Each Party shall submit any legislation and issue any regulations necessary to carry out fully its obligations under Articles XIII, XVI, XVII and XX no later than eighteen months following the entry into force of this Agreement, and exert its best efforts to enact and implement such legislation and give effect to such regulations no later than twenty-four months following the entry into force of this Agreement.

2. Each Party shall submit any legislation and issue any regulations necessary to carry out fully its obligations under Articles XIV, XV, XVIII, XIX and XXI no later than twenty-four months following the entry into force of this Agreement, and exert its best efforts to enact and implement such legislation and give effect to such regulations no later than thirty months following the entry into force of this Agreement.

3. Notwithstanding the time frames for implementation of the obligations of Articles XIII through XXI, as set forth in sections 1 and 2 above, each Party shall immediately comply to the extent possible under its laws, regulations and practice with the obligations set forth in such Articles, and shall at no time lessen its level of compliance with such obligations.

4. Notwithstanding any other provision of this Agreement, neither Party shall be obligated to comply with Article XII:1 unless and until such time as both Parties provide the level of protection required under Articles XIII through XXI and have exchanged written communications to that effect. The Parties may agree to be

bound by their obligations under Article XII:1 on an Article-by-Article basis (for the Articles in the range of XIII through XXI), as long as the communications referred to in this section have been exchanged for such individual Articles.

CHAPTER III

GENERAL ARTICLES

ARTICLE XXIII

DEFINITIONS

1. As used in Chapter I of this Agreement, the term set forth below shall have the following meaning:

A. "company," means any kind of:

- (1) corporation,
- (2) company,
- (3) association,
- (4) partnership,
- (5) sole proprietorship,
- (6) joint venture, or
- (7) other organization

whether or not organized for pecuniary gain, or privately or governmentally owned or controlled, and legally constituted under the laws and regulations of a Party or a political subdivision thereof;

B. "national," means a natural person who is a national of a Party under its applicable law.

2. As used in Chapter II of this Agreement, the terms below shall have the following meaning:

A. "a manner contrary to honest commercial practice" is understood to encompass, inter alia, practices such as theft, bribery, knowing breach or inducement to breach of contract or confidence, electronic and other forms of commercial espionage, and includes the acquisition, disclosure or use of trade secrets by third parties who

knew, or had reasonable grounds to know, that such practices were involved in the acquisition.

B. In respect of the relevant intellectual property rights, a "national" of a Party shall be understood as a natural or legal person that would meet the criteria for eligibility for protection provided for in the Paris Convention, the Berne Convention (1971), the Geneva Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, as if both were Parties to those conventions.

C. "Right Holder" means the right holder himself, any other natural or legal person authorized by him who is an exclusive licensee of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights.

D. "Integrated circuit" shall mean a product in which the elements are integrally formed in or on a piece of material which is intended to perform an electronic function.

E. "Encrypted program-carrying satellite signal" means a program-carrying satellite signal that is transmitted in a form whereby the aural or visual characteristics, or both, are modified or altered for the purpose of preventing the unauthorized reception of a program carried in that signal by persons without the authorized equipment that is designed to eliminate the effects of such modification or alteration;

F. With respect to the right in Chapter II, Article III, sections 2 and 8, to authorize or prohibit the communication of a work to the public, the term "communication to the public" shall include:

(1) communicating a work in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) communicating or transmitting a work, a performance, or a display of a work, in any form, or by means of any device or process to a place specified in section 2 (A) above or to the public, regardless of whether the members of the public capable of receiving such communications can receive them in the same

place or separate places and at the same time or at different times.

G. "Intellectual property rights" refer to copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, rights in encrypted satellite signals, trade secret rights, and plant breeders rights.

H. "Confidential information" includes trade secrets, privileged information and other undisclosed information that has not become subject to an unrestricted public disclosure under the Party's domestic law.

I. "Lawful distributor" of an encrypted satellite signal means the person or legal entity holding the right to authorize the transmission of the program-carrying satellite signal to the general public or any section thereof in the territory of the Party.

J. "Person" means a national or a company (as defined in Article XXIII, section 1 (A) of this Agreement) of a Party.

K. "Public" includes, with respect to rights of communication and performance of works provided for under Articles 11, 11bis(1) and 14(1)(ii) of the Berne Convention, with respect to dramatic, dramatico-musical, musical and cinematographic works, at least, any aggregation of individuals intended to be the object of, and capable of perceiving, communications or performances of works, regardless of whether they can do so at the same or different times or in the same or different places, provided that such an aggregation is larger than a family and its immediate circle of acquaintances or is not a group comprising a limited number of individuals having similarly close ties that has not been formed for the principal purpose of receiving such performances and communications of works.

ARTICLE XXIV

NATIONAL SECURITY

Nothing in this Agreement shall be construed:

1. to require either Party to furnish or allow access to any information the disclosure of which it determines to be contrary to essential security interests; or
2. to prevent either Party from taking any action which it considers necessary for the protection of its essential security interests:
 - A. relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapon or other nuclear explosive devices;
 - B. relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods, services, materials and technology undertaken as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - C. taken in time of war or other emergency in international relations; or
3. to prevent either Party from taking any action in pursuit of its obligations under the United Nations Charter for the maintenance of international peace and security.

ARTICLE XXV

GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of measures:
 - a) necessary to secure compliance with laws or regulations not inconsistent with the provisions of this Agreement, including measures related to the protection of intellectual property rights and the prevention of deceptive practices, or
 - b) referred to in Article XX of the General Agreement on Tariffs and Trade 1994 (GATT 1994).

2. Each Party reserves the right to deny any company the advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations.

3. Nothing in this Agreement limits the application of any existing or future agreement between the Parties on trade in textiles and textile products.

ARTICLE XXVI

CONSULTATIONS

The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.

ARTICLE XXVII

ENTRY INTO FORCE, DURATION, SUSPENSION AND TERMINATION

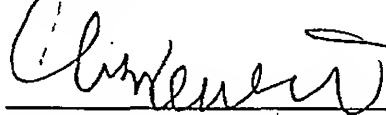
1. This Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments and shall remain in force for a period of ten years and shall continue thereafter unless terminated in accordance with paragraph 2 of this Article.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

IN WITNESS THEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, D.C., in duplicate, this fourth (4th) day of October, 1996, in the English and Khmer languages, each text being equally authentic; however, in case of a divergence of interpretation, the English language text being the text that shall prevail.

FOR THE UNITED STATES
OF AMERICA:



Charlene Barshefsky
Acting United States Trade Representative

FOR THE KINGDOM OF
CAMBODIA:



Cham Prasidh
Minister of Commerce